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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
---X
John J. Walsh, Jr., Regional Director,
Region 01, National Labor Relations Board,
for and on Behalf of the NATIONAL
LABOR RELATIONS BOARD

Petitioner **CIVIL NO.:**

vs.

W.B. Mason Co., Inc.

Respondent
---X

PETITION FOR TEMPORARY INJUNCTION UNDER
SECTION 10(j) OF THE NATIONAL LABOR RELATIONS ACT

Comes now John J. Walsh, Jr., Regional Director for Region 01 of the National Labor Relations Board (the "Board"), and petitions this Court for and on behalf of the Board, pursuant to Section 10(j) of the National Labor Relations Act, as amended ("the Act") (61 Stat. 149; 29 U.S.C. § 160(j)), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on the Further Amended Consolidated Complaint and Notice of Hearing of the General Counsel of the Board in Case Nos. 01-CA-161120, 01-CA-161428, 01-CA-161697, 01-CA-162391, 01-CA-162884, and 01-CA-177383, alleging that W.B. Mason Co., Inc. ("Respondent") has engaged in and is engaging in unfair labor practices in violation of Sections 8(a)(1), (3), and (5) of the Act.

From June 13 through June 17, 2016, and June 21, 2016, an administrative hearing took place before Administrative Law Judge Mark Carissimi. In support of this Petition, Petitioner has filed an Appendix of Attached Documents, which includes the Administrative Hearing Transcripts, selected exhibits thereto, and official Board documents.[1] Further, in support of the Petition, Petitioner respectfully shows as follows:

1. Petitioner is the Regional Director of Region 01 of the Board, an agency of the United States Government, and files this petition for and on behalf of the Board.

2. Jurisdiction of this Court is invoked pursuant to Section 10(j) of the Act.

BACKGROUND

3. On October 1, 2015, the Charging Party, International Brotherhood of Teamsters, Local 25 ("Union") filed a charge in Case No. 01-CA-161120, which was amended on March 30, 2016. On October 1, 2015, the Union filed a charge in Case No. 01-CA-161428, which was amended on March 30, 2016. On October 9, 2015, the Union filed a charge in Case No. 01-CA-161697. On October 9, 2015, the Union filed a charge in Case No. 01-CA-162391, which was amended on April 5, 2016. On October

[1] Attached to this Petition for Temporary Injunction Under Section 10(j) of the National Labor Relations Act ("the Petition") filed in this matter are Petitioner's documents in support thereof. In lieu of the traditional "Exhibit" attachments, Petitioner has attached documents designated by unique identifiers for ease of reference and consistency with the underlying administrative record, where all attachments were offered into evidence. References to the attachments are referred to and labeled as follows: the transcript to the administrative hearing is attached in volumes, and all references to the transcript in this Petition are followed by a parenthetical indication of the page number of the transcript indicated as ("Tr. [page number]"). References to the exhibits in the administrative proceeding are labeled and grouped together in batches by party, and will be referred to as follows: ("GC-[exhibit number]") refers to the General Counsel's exhibits in the administrative proceeding; ("R-[exhibit number]") refers to Respondent's exhibits; ("JT-[exhibit number]") refers to Joint Exhibits. Note that the attached exhibits from the administrative hearing are grouped in the order they were offered at the hearing, and that only the exhibits relevant to this Petition are included here.

28, 2015, the Union filed a charge in Case No. 01-CA-162884, which was amended on March 30, 2016. On June 1, 2016, the Union filed a charge in Case No. 01-CA-177383. Together, the charges allege that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1), (3), and (5) of the Act. Copies of the charges, amended charges, and affidavits of service are attached hereto as GC-1(a)-(r).

4. (a) The aforesaid charges were referred to the Regional Director of Region 01 of the Board. Following an investigation of the allegations in which Respondent was given the opportunity to present evidence and legal argument, the Regional Director, on behalf of the General Counsel of the Board, pursuant to Section 10(b) of the Act, issued an Order Consolidating Cases, Consolidated Complaint, and Notice of Hearing on April 29, 2016, alleging that Respondent engaged in, and is engaging in, unfair labor practices as charged within the meaning of Sections 8(a)(1), (3), and (5) of the Act. An Amendment to the Consolidated Complaint was issued on May 24, 2016. On June 14, 2016, an Order Further Consolidating Cases and Further Amended Consolidated Complaint was issued (the "Complaint"). The Consolidated Complaint, the Amendment to the Complaint, the Further Amended Consolidated Complaint, and their corresponding affidavits of service are attached hereto as GC-1(s-t), GC-1(v-w), and GC-71.[2]

(b) Respondent, by its Counsel, filed its Answers to the Complaint, the Amendment to the Complaint, and the Further Amended Consolidated Complaint on

[2] GC-71 was provided by hand during the Administrative Hearing to all parties.

May 11, June 6, and June 20, 2016, respectively. Copies of the Answers are attached hereto as GC-1(u), GC-1(x), and R-20.

(c) Pursuant to the Complaint, a hearing commenced on June 13, 2016, and proceeded on the record until June 21, 2016, at which time the hearing closed.

REASONABLE CAUSE TO BELIEVE THAT RESPONDENT VIOLATED THE ACT

5. Based upon the evidence adduced during the investigation of the unfair labor practice charges described above in paragraph 3 and evidence admitted into the administrative record in the hearing described above in subparagraph 4(c), Petitioner has reasonable cause to believe that the allegations contained in the Complaint are true, and that Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Sections 8(a)(1), (3) and (5) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, for which a remedy will be ordered by the Board. Further, Petitioner also has reasonable cause to believe that the efficacy of the Board's order for such remedy will be nullified without the injunctive relief sought herein. Petitioner asserts that there is substantial likelihood of success in prevailing in the underlying administrative proceedings in Case Nos. 01-CA-161120, 01-CA-161428, 01-CA-161697, 01-CA-162391, 01-CA-162884, and 01-CA-177383, and establishing that Respondent has engaged in, and is engaging in, unfair labor practices in violation of Sections 8(a)(1), (3) and (5) of the Act. In support thereof, and of the request for temporary injunctive relief, Petitioner, upon information and belief, shows as follows:

(a) Respondent admits that, at all material times, it has been a corporation with its principal place of business in Brockton, Massachusetts (the "Brockton facility"), and a place of business in South Boston, Massachusetts (the "South Boston facility"), and has been engaged in the sale and delivery of office supplies and related products and services. *Compare* Ex. B(5) ¶ 2 *with* Ex. C(2) ¶ 2.

(b) Respondent admits that, annually, in conducting its operations described above in subparagraph 5(a), Respondent sells and ships from its Brockton facility goods valued in excess of $50,000 directly to points outside the Commonwealth of Massachusetts. *Compare* Ex. B(5) ¶ 3 *with* Ex. C(2) ¶ 3.

(c) Respondent admits that, at all material times, it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. *Compare* Ex. B(5) ¶ 4 *with* Ex. C(2) ¶ 4.

(d) Respondent admits that, at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act. *Compare* Ex. B(5) ¶ 5 *with* Ex. C(2) ¶ 5.

(e) Respondent admits that, at all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act:

Mike Meath	----	Vice President of Distribution
Tim Hallinan	----	Human Resources Manager
Laura Sullivan	----	Senior Regional Human Resources Manager
Carlos DeAndrade	----	Boston Branch Manager
Ryan Clifford	----	Supply Goldstar Supervisor
Benjamin Pitre	----	Supply Goldstar Supervisor
Anthony Capello	----	Warehouse Manager
Chris Meehan	----	Chief Operating Officer
John Velez	----	Supervisor
Joseph Leo	----	Supervisor

Compare Ex. B(5) ¶ 6(a) *with* Ex. C(2) ¶ 6(a); (Tr. 145, ll. 18-23)

(f) Respondent admits that, at all material times, Mike Penn held the position of Respondent's consultant and has been an agent of Respondent within the meaning of Section 2(13) of the Act. *Compare* Ex. B(5) ¶ 6(b) *with* Ex. C(2) ¶ 6(b).

(g) Respondent, by the individuals named below, on about the dates set forth opposite their names, at the South Boston facility, promised its employees to remedy various problems if the employees rejected the Union as their bargaining representative.

Carlos DeAndrade	----	September 29, 2015
Laura Sullivan	----	September 30, 2015
Mike Penn	----	October 6 and 15, 2015

(h) On various dates between about September 30, 2015 and October 15, 2015, Respondent, by various supervisors and/or agents, including, but not limited to, those individuals named below, at the South Boston facility, promised its employees promotions, raises, and transfers if the employees rejected the Union as their bargaining representative.

Carlos DeAndrade
Benjamin Pitre
Joseph Leo
Ryan Clifford

(i) Respondent, by the individuals named below, about the dates opposite their names, at the South Boston facility, by soliciting employee complaints and grievances, promised its employees increased benefits and improved terms and conditions of employment if they rejected the Union as their bargaining representative.

Laura Sullivan	----	September 30, 2016
Carlos DeAndrade	----	October 1 and 15, 2015
Mike Penn	----	October 2015

(j) Respondent, by the individuals named below, about the dates opposite their names, at the South Boston facility, by telling employees that Respondent would not work with the Union and that Respondent would not have a Union at its South Boston facility, informed its employees that it would be futile for them to select the Union as their bargaining representative.

Chris Meehan	----	September 28, 2015
Mike Meath	----	October 1, 2015

(k) Respondent, by the individuals named below, about the dates opposite their names, at the South Boston facility, interrogated its employees about their union activities.

Laura Sullivan	----	September 28, 2015
John Velez	----	October 2, 2015
Carlos DeAndrade	----	June 1, 2016

(l) About October 2015, Respondent, by Mike Penn, at the South Boston facility, threatened its employees with loss of benefits and unspecified reprisals by telling employees that they would start from scratch and lose everything if they selected the Union as their bargaining representative.

(m) About September 28, 2015, Respondent, by Chris Meehan, at the South Boston facility, by telling employees that Respondent would find out who started the Union, created an impression among its employees that their union activities were under surveillance by Respondent.

(n) Beginning in about October and continuing on various dates thereafter, more precise dates being currently unknown to the Petitioner, Respondent, by Mike Penn, at the South Boston facility, threatened its employees in order to induce them to cease supporting the Union and to have the Union withdraw its unfair labor practice charges filed against Respondent by:

(1) telling them that their annual wage increase would be withheld;

(2) blaming the Union for employees not receiving their annual wage increase; and

(3) telling employees that granting their annual wage increase was conditioned on withdrawal of the Union's representation case petition and unfair labor practice charges.

(o) Since about September 29, 2015, and continuing to a date not currently known to the Petitioner, Respondent granted benefits to employees by:

(1) improving the efficiency of its warehouse, delivery routes, and truck loading;

(2) assisting employees in the performance of their duties;

(3) providing refreshments to employees on a frequent basis; and

(4) granting child dependent care benefits to supply driver Miguel Caminero.

(p) About October 2, 2015, Respondent laid off its employees Kerby Chery, Elton Ribeiro, and Jason Cobbler.

(q) (1) About October 1, 2015, Respondent suspended its employee Oscar Castro.

(2) About October 5, 2015, Respondent discharged Oscar Castro.

(r) (1) About October 5, 2015, Respondent suspended its employee Marco Becerra.

(2) About October 6, 2015, Respondent discharged Marco Becerra.

(s) (1) About October 6, 2015, Respondent suspended its employee Sean Brennan.

(2) About October 9, 2015, Respondent discharged Sean Brennan.

(t) (1) About December 2015, Respondent withheld its employees' annual wage increases.

(2) About June 1, 2016, Respondent granted employees annual wage increases.

(u) Respondent engaged in the conduct described above in subparagraphs 5(o), (p), (q), (r), (s), and (t) because Respondent's employees formed, joined and assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

(v) (1) Respondent admits that the following employees of Respondent, herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All full-time and regular part-time supply drivers, supply driver helpers, and supply shuttle drivers employed by Respondent at its Summer Street, South Boston, Massachusetts facility, but excluding all other employees, managers, guards, and supervisors as defined in the Act. *Compare* Ex. B(5) ¶ 23 *with* Ex. C(2) ¶ 23.

(2) From about May 14, 2015 to about September 28, 2015, a majority of the Unit designated the Union as their exclusive collective-bargaining representative.

(3) Respondent admits that, about September 28, 2015, the Union, by Organizer Christopher Smolinsky, in person, at Respondent's South Boston facility,

orally requested that Respondent recognize it as the exclusive collective-bargaining representative of the Unit and bargain collectively with the Union as the exclusive collective-bargaining representative of the Unit. *Compare* Ex. B(5) ¶ 25 *with* Ex. C(2) ¶ 25.

(w) The serious and substantial unfair labor practice conduct described above in subparagraphs 5(g) through (u) is such that there is only a slight possibility of traditional remedies erasing their effects and conducting a fair election. Therefore, the employees' sentiments regarding representation, having been expressed through authorization cards, would be protected better by issuance of a bargaining order.

(x) The allegations described above in subparagraph 5(w) requesting the issuance of a bargaining order are supported by, among other things:

(1) Carlos DeAndrade, Mike Meath, and Tim Hallinan are high ranking managers responsible for some of the discriminatory conduct described above in paragraphs (o) through (t);

(2) the conduct described above in subparagraphs 5(g) through (u) has not been retracted;

(3) there are approximately 45 employees in the Unit;

(4) the conduct described above in subparagraph 5(t) was immediately directed at all of the employees in the Unit;

(5) all of the employees in the Unit learned or were likely to learn of the conduct described above in subparagraphs 5(g) through (u);

(6) all of the employees in the Unit were adversely impacted by the conduct described above in subparagraphs 5(g) through (u);

(7) the conduct described above in subparagraphs 5(g) through (u) followed immediately on the heels of Respondent's knowledge of the Union's campaign; and

(8) the conduct described above in subparagraphs 5(k), (o), and (t) indicates Respondent's proclivity to continue violating the Act.

(y) At all times since about September 28, 2015, based on Section 9(a) of the Act, the Union has been the exclusive collective bargaining representative of the Unit.

(z) Since about September 28, 2015, Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Unit.

(aa) By the conduct described above in subparagraphs 5(g) through (n), Respondent has been interfering with, restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

(bb) By the conduct described above in subparagraphs 5(o) through (u), Respondent has been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization in violation of Section 8(a)(1) and (3) of the Act.

(cc) By the conduct described above in subparagraphs 5(t), (w), (x), and (z), Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

(dd) The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and 2(7) of the Act.

IRREPARABLE HARM CAUSED BY RESPONDENT'S VIOLATIONS OF THE ACT

6. Respondent's unfair labor practices, described above in paragraph 5, have irreparably harmed, and are continuing to harm, Respondent's employees in the exercise of rights guaranteed them by Section 7 of the Act (29 U.S.C. § 157). More specifically, Respondent's unfair labor practices have caused the following harm:

(a) Respondent's unfair labor practice charges have created an atmosphere in which employees fear retaliation and discharge if they engage in concerted and union activities;

(b) Respondent's employees have suffered significant economic harm through the loss of employment resulting from Respondent's unlawful terminations.

(c) Unit employees have been deprived of and are without the benefits of representation by the Union, the employees' freely chosen collective-bargaining representative.

(d) Unit employees have suffered the loss of the Union's ability to bargain effectively on their behalf, including over the terms and conditions of employment.

7. Upon information and belief, unless injunctive relief is immediately obtained, it can fairly be anticipated that employees will permanently and irreversibly lose the benefits of the Board's processes and the exercise of statutory rights, a harm that cannot be remedied in due course by the Board.

8. There is no adequate remedy at law for the irreparable harm caused by Respondent's unfair labor practices, described above in paragraph 5.

9. Granting the temporary injunctive relief is just and proper to prevent irreparable harm and/or to preserve the status quo existing prior to the commission of unfair labor practices.

10. Upon information and belief, it may fairly be anticipated that unless Respondent's conduct of the unfair labor practices described in paragraph 5 above is immediately enjoined and restrained, Respondent will continue to engage in those acts and conduct, or similar acts and conduct constituting unfair labor practices during the proceedings before the Board and during any subsequent proceedings before a United States Court of Appeals, with the predictable result of continued interference with the rights of employees; that employees will be deprived of their Section 7 rights under the Act, inter alia, to form, join, or assist a labor organization or to refrain from any and all such activities and to engage in concerted activities; that employees will be denied their statutory right to freely express their choice as to representation or to be represented for collective-bargaining purposes by the Union; and that the Union will be unable to ever successfully function as an effective collective-bargaining representative of the bargaining-unit employees, all to the detriment of the policies of the Act, the public interest, the interest of the employees involved, and the interest of the Union.

PRAYER FOR RELIEF

11. Upon information and belief, to avoid the serious consequences set forth above, it is essential, just, proper, and appropriate for the purposes of effectuating the policies of the Act and the public interest, and avoiding substantial and immediate injury to such public policies and interest, and in accordance with the purposes of Section 10(j) of the Act that, pending final disposition of the matters involved pending before the

Board, Respondent be enjoined and restrained from the commission of the acts and conduct alleged above, similar acts and conduct or repetitions thereof, and be ordered to take the affirmative action set forth below:

WHEREFORE Petitioner prays that an order issue in the following form:

IT IS HEREBY ORDERED that, pending the final disposition of the matters here involved pending before the Board, Respondent, its officers, representatives, agents, servants, employees, attorneys, successors and assigns, and all persons acting in concert or participation with it or them, are enjoined and restrained from:

(a) Soliciting employees' grievances and impliedly promising to remedy them.

(b) Promising employees promotions, raises, and transfers if they reject the Union as their bargaining representative.

(c) Expressing to employees that it would be futile to obtain union representation.

(d) Interrogating employees regarding their union sympathies and activities.

(e) Threatening employees with loss of benefits and unspecified reprisals because of their involvement with the Union.

(f) Creating an impression among employees that their union activities are under surveillance.

(g) Threatening employees in order to induce them to have the Union withdraw its representation petition and unfair labor practice charges.

(h) Granting employees benefits in order to discourage their support for the Union.

(i) Laying off employees for engaging in union activities in order to discourage them and other employees from supporting the Union.

(j) Suspending, discharging, or otherwise discriminating against employees for engaging in union activities in order to discourage them and other employees from supporting the Union.

(k) Withholding employees' annual wage increase in order to discourage them from supporting the Union.

(l) Granting employees a wage increase in order to discourage them from supporting the Union.

(m) Failing and refusing to recognize and bargain in good faith with the Union as the exclusive collective bargaining representative of supply drivers and supply driver helpers.

(n) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

IT IS FURTHER ORDERED that Respondent take the following affirmative actions:

(a) Within five days from the date of the District Court's Order, offer to employees Kerby Chery, Jason Cobbler, Elton Ribeiro, Sean Brennan, Marco Becerra, and Oscar Castro interim reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Notify the Union in writing that it recognizes the Union as the exclusive representative of the employees in the following appropriate unit, that it will bargain in good faith with the Union concerning terms and conditions of employment of the Unit, and that if an agreement is reached, it will embody the understanding in a signed agreement.

The appropriate unit is:

> All full-time and regular part-time supply drivers, supply driver helpers, and supply shuttle drivers employed by Respondent at its Summer Street, South Boston, Massachusetts facility, but excluding all other employees, managers, guards, and supervisors as defined in the Act.

(c) Within five days from the date of the District Court's Order, post copies of the Order at Respondent's South Boston facility where notices to employees are customarily posted, those postings to be maintained during the pendency of the Board's administrative proceedings free from all obstructions and defacements;

(d) Grant Board agents reasonable access to the South Boston facility in order to monitor compliance with the posting requirements;

(e) Within 10 days from the date of the District Court’s Order, convene all employees employed in the Unit to a mandatory meeting or meetings at the South Boston facility on working time or times scheduled to insure maximum attendance, in order for Respondent’s Branch Manager, Carlos DeAndrade, or, at Respondent’s option, a Board agent in presence, to read the District Court’s Order to all employees, affording the Board and the Union a reasonable opportunity to be present at any assembly called for this purpose; and

(g) Within twenty days from the date of the District Court's Order, file with the Court and serve a copy upon the Regional Director of Region 01 a sworn affidavit from a responsible official setting forth, with specificity, the manner in which Respondent has complied with the terms of the District Court's Order, including how and when it posted the documents required by the Court's decree.

Dated at Boston, Massachusetts,
September 26th, 2016

Respectfully submitted,

/s/ Elizabeth A. Vorro
/s/ Alyssa Rayman-Read

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Appendix of Attachments to Petition

Transcript Volumes and Exhibits Offered in the Administrative Hearing[3]

- Tr. 1-253: Volume One of the Hearing Transcript
- Tr. 254-457: Volume Two of the Hearing Transcript
- Tr. 458-590: Volume Three of the Hearing Transcript
- Tr. 591-767: Volume Four of the Hearing Transcript
- Tr. 768-871: Volume Five of Hearing Transcript
- Tr. 872-982: Volume Six of the Hearing Transcript
- General Counsel's Exhibits at Hearing (Parts 1 and 2)
- Joint Exhibits at Hearing
- Respondent's Exhibits at Hearing

[3] Only exhibits relevant to this Petition are included.